

Decision 01-10-073

October 25, 2001

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Coral Communications, Inc. (Coral) and Michael Tinari, President of Coral; William Gallo, Senior Vice President of Coral; Devon Procella, Vice President of Sales and Operations of Coral; Neal Deleo, Vice President Finance and MIS of Coral to determine whether the corporation or its principals have operated within California without having a certificate to operate from the Commission and whether they have charged California subscribers for telecommunications services the subscribers never authorized.

Investigation 98-08-004  
(Filed August 6, 1998)

**ORDER GRANTING REHEARING AND VACATING**  
**DECISION (D.) 01-04-035**  
**AS IT APPLIES TO OAN SERVICES, INC.**

**I. INTRODUCTION**

Coral Communications, Inc. is a Florida marketing company that has been sued by local authorities in California and by Attorneys General in other states for "cramming."<sup>1</sup> In late 1997 and early 1998, Coral used sweepstakes

---

<sup>1</sup>In December, 1998, the Florida Public Service Commission approved a settlement in which Coral agreed to pay a \$15,000 penalty for operating without a certificate, refund money to consumers, and withdraw all of its marketing materials from Florida until it obtains a certificate. (98 FPSC 12: 289, 1998 Fla. PUC Lexis 2317.) Coral obtained the certificate but never paid the fine, so the Florida PSC revoked its certificate. (Palm Beach Post, April 21, 1999.)

In August 1999, Coral agreed to pay \$100,000 to settle cramming charges against it by the State of New Jersey. (NY Times, Aug. 25, 1999.) Coral has also been sued by the states of Missouri (Kansas's City Star, March 6, 1998) and Illinois (PR Newswire Association, Inc., March 19, 1998).

promotions in various locations in California to obtain names and telephone numbers of individuals, and then billed these individuals for calling-card services and other telephone services that they had not ordered. Coral accomplished this by contracting with several different billing agents, who aggregated Coral's charges and forwarded them to the local telephone companies. The local telephone companies then included these charges on the customers' bills. The Commission received several hundred complaints about these charges, as did the local telephone companies.<sup>2</sup>

On August 6, 1998, the Commission instituted formal proceedings charging Coral with cramming and operating without a certificate of public convenience and necessity. Another company, Easy Access, Inc., and two of its directors were later added as respondents based on evidence that Easy Access had purchased Coral's calling card business. (See D.98-12-101, as modified by D.99-04-033.)

Anti-cramming legislation, codified at Public Utilities Code Sections 2889.9 and 2890, became effective on January 1, 1999, and confers on the Commission limited jurisdiction over billing agents that are not public utilities.<sup>3</sup> The Commission may, under these statutes, require billing agents to provide

---

<sup>2</sup> In late 1998, the District Attorneys of Monterey, San Mateo, Tulare and Kings County filed suit jointly against Coral and the individuals believed to be responsible for Coral's actions. The civil action, filed in Monterey County Superior Court, was based on the same practices that prompted the Commission's proceeding. The suit charged Coral with misleading advertising and other deceptive practices in violation of the California Unfair Business Practices Act. On January 4, 1999, the court issued a preliminary injunction enjoining Coral from offering any telephone service without written approval from the Commission, and from charging customers for any telephone service without their informed, written, and verified consent. (See People of the State of California v. Coral Communications, et al., No. 116211 (January 4, 1999).) Ultimately, the court approved a settlement agreement.

<sup>3</sup> Public Utilities Code Sections 2889.9 and 2890 prohibit solicitors of products or services from misrepresenting an association or affiliation with a telephone carrier, require that telecommunications services and goods and services unrelated to telecommunications be billed separately if they are included in the same envelope, and give the Commission limited authority over billing agents, including the authority to require billing agents to provide reports to the Commission, to cease billing and collection services for any entity that has failed to respond to Commission staff requests for information, and to cooperate with the Commission in its efforts to enforce the Public Utilities Code regarding telecommunications customer and subscriber services. Public Utilities Code Section 2889.9(i) empowers the Commission to issue decisions and orders necessary "to safeguard the rights of consumers and to enforce the provisions of this article."

information, and may impose penalties on them for failing to comply with the various requirements of the statutes and with Commission orders.

Evidentiary hearings were held in this matter on April 12 and 13, 1999. On August 6, 1999, we issued D.99-08-017, which brought several billing agents, including OAN Services, Inc. (OAN), into the proceeding for the first time. This Decision required five billing companies (including OAN) believed to have provided billing services to Coral to provide an accounting of their transactions with Coral, and to turn over to the Commission the funds that they had collected on behalf of Coral. OAN filed an application for rehearing of D.99-08-017 on September 7, 1999. On April 21, 2000, we issued D.00-04-067, which imposed a partial stay of D.99-08-017 pending review of the factual and legal issues raised in OAN's application for rehearing of D.99-08-017.

On November 3, 2000, a Presiding Officer's Decision (POD) was issued in this matter. With respect to OAN, the POD asserted jurisdiction pursuant to Public Utilities Code Sections 2889.9 and 2890 and ordered OAN to "return all the funds from Coral's accounts to Coral's customers." (POD, p. 49.) The POD further ordered OAN to refund "all assigned and retained Coral funds" in the amount of \$288,690, as well as to refund "to all California customers all funds obtained from Coral billings and held as reserves." (Ordering Paragraphs 4-5.) OAN filed an appeal of the POD on December 4, 2000. In its appeal of the POD, OAN objected to the retroactive application of Public Utilities Code Sections 2889.9 and 2890 to billings that occurred almost six months before the effective date of these statutes.

On April 23, 2001, we issued D.01-04-035. This Decision required OAN to do the following: (1) "return all the funds from Coral's accounts to Coral's customers" (D.01-04-035, p. 49); (2) refund "all assigned and retained Coral funds" in the amount of \$288,690 (Ordering Paragraph 4); and (3) refund "to all California customers all funds obtained from Coral billings and held as

reserves” (Ordering Paragraph 5.) A timely application for rehearing of D.01-04-035 was filed by OAN. No responses to the rehearing application have been filed.

In its rehearing application, OAN makes numerous allegations of legal error in D.01-04-035. However, because we find that Public Utilities Code Sections 2889.9 and 2890 cannot be applied retroactively to billings that occurred prior to the effective date of these statutes, we do not reach the majority of issues raised in OAN’s rehearing application.<sup>4</sup> Therefore, based on the unique facts of this case, we grant rehearing for the purpose of vacating D.01-04-035 as it applies to OAN.

## II. DISCUSSION

In its rehearing application, OAN claims that Public Utilities Code Sections 2889.9 and 2890 became effective on January 1, 1999, almost six months after all billings related to Coral passed through OAN’s processes. There appears to be no factual dispute that OAN did, in fact, cease all Coral-related billing several months before the Commission obtained jurisdiction over OAN pursuant to Sections 2889.9 and 2890.

The general rule, both in California and in the United States, is that, absent some clear indication to the contrary, any change in the law is presumed to have prospective application only. “The principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student.” (United States v. Security Industrial Bank (1982) 459 U.S. 70, 79 [citations omitted].) The United States Supreme Court has emphasized that retrospective application “will not be given to a statute that interferes with antecedent rights” unless it is the “unequivocal and inflexible import of the terms, and the manifest intention of the legislature.” (Id. [citations omitted]; see also Evangelatos v. Superior Court (1988) 44 Cal.3d 1188, 1207.) In Evangelatos, the

---

<sup>4</sup> While other billing agents, including ITA, TBS, CCPI and Accutel, have been parties to this proceeding, none of these parties has sought rehearing of D.01-04-035. Thus, we only reach the issues raised by OAN as they apply specifically to OAN.

California Supreme Court reiterated this principle by stating that “in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the legislature or the voters must have intended a retroactive application.” (Evangelatos, 44 Cal.3d at 1208-1209.) Thus, the Court reaffirmed the fundamental principle that there is “a presumption of prospectivity” applicable to new legislative enactments “in the absence of a clear legislative intent to the contrary . . . .” (Id. at pp. 1193-1194, 1208, 1213-1214.)<sup>5</sup>

Upon close examination of Public Utilities Code Sections 2889.9 and 2890, there is nothing on the face of either of these statutes to indicate that retroactive application was intended by the legislature. Moreover, there is nothing in the underlying legislative history to indicate legislative intent for these statutes to apply retroactively. Since it appears that the legislature did not intend for these statutes to have retroactive application, the “presumption of prospectivity” applies, and thus Sections 2889.9 and 2890 cannot be applied to billings that occurred several months before the effective date of these statutes.

We are profoundly dissatisfied with the outcome of this proceeding. Coral and its billing agents unlawfully billed and collected millions of dollars from California consumers. Despite our best efforts, we have been unable to effectuate any return of those funds due to the intervening insolvency of Coral and the billing agents. We intend to aggressively maintain our “policy of resolutely pursuing all assets which may be needed to fund reparations orders or fines.” (D.99-08-017, p. 3.)

Public Utilities Code Section 2889.9(i) authorizes the Commission to “adopt rules, regulations and issue decisions and orders, as necessary, to

---

<sup>5</sup> See also Western Security Bank v. Superior Court (1997) 15 Cal.4<sup>th</sup> 232, 243; Tapia v. Superior Court (1991) 53 Cal.3d 282, 287; People v. Hayes (1989) 49 Cal.3d 1260, 1274; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 827; Rosasco v. Commission on Judicial Performance (2000) 82 Cal.App.4<sup>th</sup> 315, 321.

safeguard the rights of consumers and to enforce provisions of this article.” Returning funds unlawfully obtained via billing agents is the essence of safeguarding the rights of consumers. We read Section 2889.9(i) to grant this Commission jurisdiction to retrieve unlawfully obtained funds for California consumers. We reiterate our intention to broadly interpret this section and use this jurisdiction to require disgorgement of cramming-related funds from billing agents.

### **III. CONCLUSION**

Rehearing is granted for the purpose of vacating D.01-04-035 as it applies to OAN.

**IT IS THEREFORE ORDERED THAT:**

1. D.01-04-035 is vacated as it applies to OAN.
2. This proceeding is closed.

This order is effective today.

Dated October 29, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners